IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1864/07

Kanhaiya **Versus** State

DATE OF ORDER :: 14/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Gajendra Singh Rathore, for petitioner

Mr. Arun Sharma, Public Prosecutor

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Instant petition has been filed assailing order dated 6th September, 2007 whereby application filed u/ss.451-457 Cr.P.C. for release of kisan bugga [jugad] on superdginama was rejected and revision petition preferred against the said order was also dismissed vide order dated 19th September, 2007.

FIR was registered against accused-petitioner for offence u/ss.41 & 42 of Rajasthan Forest Act, 1953 on 29th August, 2007 and his vehicle [jugad] was also seized pending investigation. The Investigating Officer filed challan on 31st August, 2007. Thereafter, application was filed by petitioner for release of kisan bugga [jugad] on superdginama which was dismissed on 6th September, 2007 and revision petition preferred against the said order was also dismissed vide order dated 7th September, 2007.

Counsel for petitioner submits that if kisan bugga [jugad], which is only source of his livelihood, is not given to him on superdginama during trial, it will cause great prejudice to him and since challan has been filed, trial will take its own time, therefore, the said jugad be released on superdginama.

Learned Public Prosecutor, on the other hand, supported the order impugned and submits that release of kisan bugga [jugad] on superdginama to petitioner will not be justified at this stage when trial is pending.

It is not in dispute that kisan bugga [jugad] in question belongs to petitioner and none else has claimed its title or possession.

Since challan has been filed, no purpose will be served by keeping the said kisan bugga [jugad] into custody and the continuous detention of the vehicle will deteriorate its condition and will also certainly cause loss to petitioner. In support thereof, counsel has placed reliance on the judgment of this court in **Lokesh Vs. State of Rajasthan [2007 (1) RCC-379]**.

Consequently, misc. petition stands allowed and the orders dated 6th September, 2007 & 19th September, 2007 are hereby quashed and set aside.

Taking into consideration all the facts & circumstances of the case, kisan bugga [jugad] seized during investigation in FIR No.169/07 for offences u/ss.41 & 42 of Rajasthan Forest Act, 1953, be released on superdginama and delivered to petitioner during pendency of investigation, inquiry & trial on satisfying following conditions:

(1)petitioner shall furnish personal bond in a sum of Rs.50,000/- [Rupees Fifty thousand only] with one surety in the like amount to the satisfaction of the trial Court with the stipulation to produce the kisan bugga [jugad] on superdginama before the trial Court or competent authority during inquiry, investigation and trial as & when ordered/required.

(2)that in the presence of investigating officer, he shall get three coloured cabinet size photographs of kisan bugga [jugad] on superdginama in question before the trial Court.

[AJAY RASTOGI],J.